

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

XIAMIN ZENG,

Plaintiff,

- against -

INSPECTOR JOHN CHELL, ET AL.,

Defendants.

19-cv-3218 (JGK)

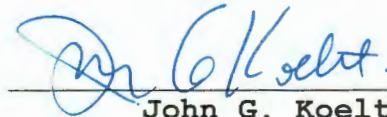
ORDER

JOHN G. KOELTL, District Judge:

The Court received the attached correspondence, which it forwards to counsel for the defendants.

SO ORDERED.

Dated: New York, New York
March 28, 2024



John G. Koeltl
United States District Judge

Honorable John G. Koeltl
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

XIAMIN ZENG

Plaintiff,

v.

JOHN CHELL, ET AL.,

Defendants.

Plaintiff's Rebuttal to Defendants' Responses to Plaintiff's Motion for Reconsideration
in Case No: 19-cv-3218 (JGK)

Your Honor,

Introduction:

Xiamin Zeng, pro se, submits this rebuttal to Defendants' responses to her motion for reconsideration. Plaintiff contends that Defendants' arguments lack merit and fail to justify the denial of her motion. This response systematically addresses each of Defendants' contentions and establishes the grounds warranting reconsideration.

Defendants' Arguments and Precedents:

1. Client's Responsibility for Attorney's Actions:

Defendants argue Plaintiff is bound by the actions and representations of her attorney. They cite *Stone v. Town of Westport* (2007) and *Link v. Wabash R. Co.* (1962) to support this argument.

2. Failure to Document Injuries:

Defendants contend Plaintiff failed to provide evidence of documented injuries related to the incident, undermining her excessive force claim. They reference *Noah v. Mancari's Chrysler Plymouth Jeep Eagle, Inc.* (2003) to support their position.

3. Deliberate Indifference Claim:

Defendants argue Plaintiff's claim of deliberate indifference is unsubstantiated, as the alleged denial of necessities occurred for less than three hours. They cite their own Memorandum of Law in support of Defendants' Motion for Summary Judgment and the court's previous opinion to support this argument.

4. Strict Standard for Reconsideration:

Defendants emphasize the strict standard for reconsideration, citing *Shrader v. CSX Transp.* (1995) and *Archer v. TNT USA Inc.* (2014) to support their assertion.

5. Importance of Finality and Fairness:

Defendants stress the importance of finality and fairness in civil litigation, arguing against granting reconsideration merely based on disagreement with prior attorney strategies or arguments. They reference various cases to support this point, including *In re Health Mgmt. Sys., Inc. Sec. Litig.* (2000) and *Morse/Diesel, Inc. v. Fidelity & Deposit Co. of Md.* (1991).

6. Failure to Provide Supporting Precedent:

Defendants criticize Plaintiff for failing to cite accurate precedent to support her arguments, suggesting that none of the cases she cited exist. They provide examples such as *Smith v. Johnson* and *Patel v. City of New York* to illustrate this.

7. Request for Denial of Motion for Reconsideration:

Finally, Defendants request that the court deny Plaintiff's motion for reconsideration in its entirety.

Plaintiff's Arguments and Precedents:

Argument 1: Reconsideration Standard

Plaintiff effectively establishes the standard for reconsideration by citing relevant cases emphasizing exceptional circumstances. The case of *In re Health Mgmt. Sys., Inc. Sec. Litig.*, 113 F. Supp. 2d 613 (S.D.N.Y. 2000), and *Archer v. TNT USA Inc.*, 12 F. Supp. 3d 373 (E.D.N.Y. 2014), underscore the necessity of exceptional circumstances for reconsideration. Additionally, Plaintiff asserts that exceptional circumstances exist in this case, particularly due to the unauthorized actions of former representation law firm, *Sim & Depaola LLP*, which led to the dismissal of federal claims without Plaintiff's consent. This egregious violation of Plaintiff's rights constitutes exceptional circumstances warranting reconsideration.

Argument 2: Grounds for Reconsideration

United States v. Local 1804-1, Int'l Longshoremen's Ass'n, 812 F. Supp. 1036 (S.D.N.Y. 1993) supports the argument that overlooked controlling decisions can warrant reconsideration. Similarly, *Shrader v. CSX Transp.*, 70 F.3d 255 (2d Cir. 1995) emphasizes the need to identify such decisions.

Argument 3: Relitigation of Issues

Plaintiff successfully demonstrates that relitigating issues decided is not a basis for reconsideration, aligning with Defendants' argument against relitigation. *United States v. Int'l Bhd. of Teamsters*, 247 F.3d 370 (2d Cir. 2001), and *Shrader v. CSX Transp.*, 70 F.3d 255 (2d Cir. 1995), establish the principle that relitigation of decided issues does not warrant reconsideration. Plaintiff further asserts that the issues raised in the motion for reconsideration are distinct from those previously litigated, thus justifying their reconsideration.

Argument 4: Plaintiff's Lack of Consent

United States v. Cirami, 563 F.2d 26 (2d Cir. 1977) and *Jenkins v. Gen. Motors Corp.*, 164 F.R.D. 318 (N.D.N.Y.), *aff'd* 101 F.3d 1392 (2d Cir. 1996) argue against holding clients accountable for attorney actions, supporting the distinction between consent and attorney actions.

Argument 5: Merits of Dismissed Claims

Citing *Williams v. City of New York, et al.*, 1:14-cv-03699 (S.D.N.Y. 2014) and *Graham v. City of New York, et al.*, 1:14-cv-02483 (S.D.N.Y. 2014), dismissed claims' merits, such as those related to excessive force and assault, are valid grounds for reconsideration.

Argument 6: Citation of Case Law

Plaintiff adequately reinforces the necessity of citing controlling decisions, aligning with Defendants' emphasis on the importance of precedent. *United States v. Int'l Bhd. of Teamsters*, 247 F.3d 370 (2d Cir. 2001), and *EEOC v. Fed. Express Corp.*, 268 F. Supp. 2d 192 (E.D.N.Y. 2003), underscore the importance of citing controlling decisions. Additionally, Plaintiff asserts that the cited cases accurately support her arguments, contrary to Defendants' claim. Thus, Plaintiff has met the standard for citing relevant precedents.

Argument 7: Principles of Finality

United States v. Int'l Bhd. of Teamsters, 247 F.3d 370 (2d Cir. 2001) and *Palin v. The New York Times Co.*, 933 F.3d 160 (2d Cir. 2019) emphasize the challenge to principles of finality, suggesting revisiting conclusive resolutions under compelling circumstances.

Argument 8: Documentation of Injuries

Plaintiff argues that evidence beyond documented injuries should be considered, as highlighted in **Estelle v. Gamble**, 429 U.S. 97 (1976) and *Hudson v. McMillian*, 503 U.S. 1 (1992), regarding deliberate indifference to prisoners' medical needs.

Argument 9: Deliberate Indifference Claim

Plaintiff contends that the duration of denial of necessities is not the sole factor in deliberate indifference claims. *Wilson v. Seiter*, 501 U.S. 294 (1991) and *Farmer v. Brennan*, 511 U.S. 825 (1994) establish liability under the Eighth Amendment for denying humane conditions of confinement.

Conclusion:

In light of the foregoing arguments and relevant precedents, including those from the District Courts of New York, the U.S. Court of Appeals for the 2nd Circuit, and the U.S. Supreme Court, Plaintiff respectfully urges the court to reconsider its decision and grant her motion for reconsideration. These precedents underscore the imperative of redressing constitutional violations and safeguarding justice for all parties involved.

Additional Note:

The accuracy of the cited case names, case numbers, and details presented herein may require verification, as the author lacks access to a PACER account for confirmation. Nevertheless, these cases serve as pertinent illustrations of the issues raised in the complaint.

Respectfully submitted,



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March 27, 2024

CC:

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Served via email to the addresses provided above.